

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF  
MASSACHUSETTS,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Case No. 1:09-11156-JLT

**MOTION TO INTERVENE OF REPRESENTATIVE LAMAR SMITH**

Lamar Smith is the United States Representative for the 21<sup>st</sup> Congressional District for the State of Texas.

Representative Smith moves this Court for an order granting him intervention as of right under Federal Rule of Civil Procedure 24(a). Alternatively, Representative Smith moves the Court to grant him permissive intervention under Rule 24(b). Representative Smith has a protectable interest in the subject matter of this litigation due to his position as ranking minority member of the House Judiciary Committee, which entitles him to ensure that the Attorney General defends federal legislation and appeals adverse decisions. 28 U.S.C. § 530D. Because the Attorney General has been ambivalent as to whether he will appeal the case and has not adequately defended DOMA, Representative Smith brings this motion to intervene to ensure that this Court's judgment will be appealed and to give DOMA a full and vigorous defense on appeal. In support of this motion, Representative Smith files a memorandum of law. Representative Smith has also attached to this motion a notice of appeal as his responsive pleading.

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel for Proposed Intervenor-Defendant hereby certifies that on October 4, 2010, Dale Schowengerdt conferred with Counsel for the Plaintiff and Defendants. At the time of this filing, counsel for Plaintiff, Maura Healey, had not responded as to what the Attorney General's position would be on the motion. Counsel for the Defendants, Christopher Hall, responded that the Defendants do not assent to this motion.

Respectfully submitted

Honorable Lamar Smith

by his Attorneys,

s/Philip D. Moran

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*Attorneys for Proposed Intervenor-Defendant*

*\*Pro Hac Vice motion pending*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2010, I electronically submitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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